INDUSTRIAL MEDICAL COUNCIL

DEPARTMENT OF INDUSTRIAL RELATIONS

INITIAL STATEMENT OF REASONS

FOR PROPOSED ACTION TO ADOPT AND AMEND

CALIFORNIA CODE OF REGULATIONS, TITLE 8, CHAPTER 1

VARIOUS SECTIONS 1 through 158

TITLE 8. Industrial Medical Council

The IMC proposes to amend sections 1, 10, 11, 11.5, 14, 15, 17, 18, 19, 20, 30, 31, 31.5, 32, 33, 34, 35**,** 35.5, 36, 38, 39, 39, 40, 41, 49, 49.2, 49.4, 49.6, 49.8, 49.9, 50, 52, 60, 61, 62, 156, 157, and 158, and to adopt sections 21, 33.5, 58 and 63.

In all Sections, wherever they appeared, the phrase ***injured worker*** and the word ***worker*** were replaced by the word ***employee***, (in both singular and plural forms) for clarity and consistency. The Labor Code uses the term ***employee*** to refer to the injured worker throughout the sections dealing with workers' compensation. The regulations had used both employee and injured worker at various points, without any reason for the distinction. The purpose of this change was to achieve consistency, and to harmonize the regulations with the terminology of the Labor Code.

Section 1.
In this definitional section, the paragraphs were reordered and re-lettered, so that all items are listed alphabetically. This change was made for ease of readability. There are minor changes to the definitions of the terms **AME, Comprehensive Medical-Legal Evaluation,** Continuing Education Program, **Direct Medical Treatment, Provider, Evaluator, Qualified Medical Evaluator, Rebuttal examination, Course, Treatment Guideline, Employer,** which were all done for clarity. New terms **QME** and **QME Competency Examination for Acupuncturists** were defined, the term QME being moved from Section 49.

Subsection (c) **"AME"** is redefined to include all uses of the term ***agreed medical examiner*** as found in the Labor Code, to remove ambiguity.

Subsection (f) **"Comprehensive Medical-Legal Evaluation"** was redefined to refer to simplify it. The deleted phrase became unnecessary when the words, ***defined in*** were used. The reference to subsection (c) of Section 9783 was necessary to make the definition more precise.

In Subsection **(h) "Continuing Education Program"** the term course was deleted because it was unnecessary, and possibly confusing, as it might have lead to a conclusion that the defined term also referred to the required writing course, which was not to be included within continuing education.

In Subsection **(k) "Direct Medical Treatment"** the term ***health care provider*** was changed to ***physician*** to be more precise, and to remove any possible inference that a non-physician entity may be treating. The term ***to*** was added for clarity, and the term ***non-industrial*** was removed because it was unnecessary. The last clause of the subsection was deleted because it was unnecessary.

In Subsection **(n) "Education Provider"** it was necessary to add the word ***Education*** to distinguish this type of provider from ***medical providers***, which is the normal sense of the word ***provider*** in the health care area.

In Subsection **(o) "Evaluator"** it was necessary to add the defined abbreviation ***AME*** for clarity and ease of use, since the term ***AME*** is used in the regulations, and it is included within the types of examiners which are ***evaluators***.

New Subsection **(r) "QME"** was added for ease of use, so that the abbreviation ***QME*** , very commonly used in the workers compensation community, could be used in the regulations. It is also necessary, since the previously undefined term had been used in the regulations. This term was moved from Section 49.

In Subsection **(s) "Qualified Medical Evaluator**" it was necessary to delete the last clause because it was unnecessary, as being duplicative of a statutory provision, and its directive was inappropriate for inclusion among a definitional regulation.

In Subsection **(t)**, a new paragraph **(2) "QME competency examination for acupuncturists"** was added because it was necessary to have a definition for the acupuncturist exam, referred to in another regulation. Acupuncturists take a different examination from that taken by physicians, and their rights under the QME program are limited.

In Subsection **(v) "Rebuttal examination"** It was necessary for clarity to show that this type of examination exists only for injuries which occurred during the stated period. Statutory changes eliminated the examination for injuries occurring after December 31, 1993.

In Subsection **(w) "Report Writing course"** it was necessary to insert the words ***Report Writing*** to distinguish between this course and other types of required or approved courses. The insertion of the **words Labor Code Section 139.2** was necessary to clearly distinguish the course being referred to.

In Subsection **(z) "Treatment Guideline"** it was necessary to change the word ***the*** to ***an*** , because there are more than one guideline. The words ***which sets out a systematic statement*** were deleted because they are unnecessary to the definition.

In Subsection **(aa) Uninsured Employer** The word **Uninsured** was inserted in the title, because the word ***employer*** alone is elsewhere used in the regulations where it is not intended to connote *uninsured* employers. The words ***Uninsured Employers Fund*** were substituted for the abbreviation ***UEF***, because UEF was never defined in the regulations.

Section 10.
This section provides for the appointment process for a QME. This section was amended to add that a physician who is on probation from the physician's licensing board or who has been convicted of a crime may be denied appointment. This addition was necessary, because although the statutes imply that such QME's may not be reappointed, because they require the discipline of such QME's, they are silent on the subject of appointment. It would be improper for the IMC to have to appoint QME's who might be the subject of discipline and even termination if the circumstance occurred after their appointment. Although this has been the past practice, there was no specific regulation authorizing it. It also would provide that physicians whose license is currently suspended may not be appointed, and that physicians must be of good moral character to be appointed. This is also necessary to allow the IMC not to appoint physicians who may be subject to later removal. The IMC found it important not to have dishonest physicians on the QME rolls, since they are fact finders in the workers compensation disability evaluation system, and thus their pronouncements have to be above suspicion.

Physicians whose appointment had been revoked in the past would have to establish their rehabilitation before being appointed. This change is part of solving the same problem of preventing dishonest physicians from being appointed. Only the most serious transgressions are sanctioned by revocation of status. To prevent the worst of the transgressors from being later reappointed, it is necessary that the IMC be able to require them to show they have been rehabilitated before being reappointed.

Physicians who had resigned or did not renew their appointment while under investigation or accusation, would be subject to the continuation of the investigation or accusation if they reapplied for appointment, and would not be reappointed if the previously filed accusation were proven unless they established their rehabilitation. Thus is another variant of the same problem – that of allowing the IMC to prevent dishonest QME's from re-entering the system. This is necessary, because otherwise a QME under accusation could resign, and then later reapply for appointment again, without the character of his past acts being considered.

Section 11

This section provides for the academic and professional qualifications for appointment as a QME. There are several minor grammatical changes, and changes in language for clarity. The term **osteopathic equivalent** is changed to **Osteopathic Postgraduate Training Institute**.

Applicants for appointment who were on probation or had restricted licenses, would have to state the nature of the restrictions on their application for appointment. This is necessary because the application is the only cost effective way for the IMC to obtain the information required to determine if the physician should be appointed. The problem is applicants who are on probation or with restricted licenses are being appointed when they should be investigated, and some should not be appointed, or appointed only with restrictions.

An applicant who was suspected of cheating on the QME examination may be disqualified from the examination, and if the charge were substantiated, would be barred from taking the exam for at least two years thereafter. The problem is to be able to prevent those who cheat on the exam from being appointed. The IMC finds that those who cheat on examinations are likely to be dishonest in other areas, and that if admitted they may also not be able to have passed the exam.

Acupuncturists would have to pass the newly defined QME Competency Examination for acupuncturists. The problem is that acupuncturists have limited rights under the Labor Code to evaluate disability, and thus are not required to take the full examination required of other QME's. However, this separate examination has never been provided for by the IMC regulations. This provision is necessary for the IMC to allow acupuncturists to take a different examination.

Section 11.5
This section provides for the Disability Evaluation Report Writing Course. For clarity, to distinguish from other courses, the word ***course*** is modified by the words ***report writing***.

Only report writing courses offered by approved education providers would be qualified for appointment purposes. This is a necessary provision because only providers who have gone through the IMC‘s approval process can be certain of providing the course content specified by the regulations. The part of the section describing the process of approving education providers is reworded for clarity. Many of the paragraphs of the section were re-lettered because of rewriting of the first paragraph for clarity.

Section 14
This section provides for the academic and professional qualifications for appointment of chiropractors as QME's. The amendment specifies that courses will be approved for a two year period, and that no certification in workers compensation evaluation shall qualify unless subsequent to the licensing of the chiropractor. The two-period of approval provision is necessary because the IMC finds that at some point it must reinvestigate the approved providers to determine if they continue to offer the quality and content of instruction required. The IMC found that, considering its resources of personnel, and the number of institutions to be monitored, a two year term was the most cost effective. The IMC has found that only licensed chiropractors have the reliability of knowledge and experience to perform well as QME's. There

is a problem in that some schools may otherwise include the course within their normal curriculum, and thus graduates of such schools would have fewer actual hours of instruction including the normal schooling and the course. The IMC also found that only already fully accredited chiropractors could obtain the full benefit of training from the post graduate course. It is thus necessary that the course must be taken after chiropractic training and licensure are completed.

Section 15
This section specifies the basis for appointment as a retired or teaching physician. The section is reworded for clarity. The ten year practice requirement in workers compensation is extended to academic as well as retired physicians. The IMC found substantial experience in workers compensation treatment was necessary for all physicians to be good evaluators. The IMC also found that those physicians who would have served as agreed medical examiners for the number of times specified in Labor Code section 139.2 would also have at least ten years experience in workers compensation treatment. The IMC concluded that adding the requirement of ten years experience for otherwise not qualified academic physicians was the most appropriate standard for determining if the academic physician where exceptionally well qualified as required by Labor Code section 139.2.

The number of hours of practice allowed per week for retired physicians is increased from less than ten to no more than fifteen. The IMC found that the limit of ten hours per week was so restrictive as to prevent physicians from qualifying under this exception, because few physicians who work after retirement are able to work less than ten hours per week, because it is uneconomical to do so. The IMC determined it was necessary to increase the limit to 15 hours per week, to allow any exceptionally well qualified physicians to qualify under this exception.

Paragraph (d), providing for physicians who have retired from practice due to a disability is deleted.

Upon review, the IMC found this provision was contrary to Labor Code section 139.2 That section allowed exceptions to normal qualifications only to physicians engaged in teaching or retired from practice, and not specifically for physicians retired because of disability. The IMC concluded that this exception was contrary to labor Code section 139.2, and that physicians who had retired because of disability, might qualify under the retirement exception of this section.

The time period during which a physician is to notify the IMC of a change in status is specified at 30 days. There is a problem, in that the absence of a deadline specified during which physicians must notify the IMC of changes in status, effectively eliminated many notifications otherwise due. The IMC found that 30 days was a reasonable time for a QME to notify of change in status, and selected 30 days as the deadline for notification.

The reference to the full time forensic practice during the three former years was deleted. Upon review, the IMC found that Labor Code section 139.2 only prohibited physicians engaged in full time forensic practice from becoming QME's. The IMC found that the requirement that the physician not have a full time forensic practice for a three year period was inconsistent with the

statute. The IMC determined that there was no reason to extend the ban on full time forensic practice beyond the current time to a three consecutive year ban.

Section 17.
This section provides for a fee schedule for QME's. A typographical error is corrected.

Section 18.
This section provides for the time at which fees are to be paid by QME's. The section was rewritten for clarity, deleting unnecessary language. A requirement that QME's whose status had lapsed for more than two years would have to meet current requirements for eligibility and retake the report writing class was added. The IMC has had a problem with QME's whose status had lapsed, upon their seeking reentry into the QME roll. Former QME's who have been away from the system for an extended period of time, and are thus not writing QME reports, lose some of the knowledge which is taught in the report writing course, which would otherwise have been kept up through use. The IMC had already found that an absence of two years warranted having to pass the examination again. It has since found that an absence of two years would have an equal effect on skills of report writing as well as general knowledge of workers compensation. On that basis it has determined that an absence of two years should also require that the report writing class should be taken again before reinstatement. It has likewise found that an absence of two years should be treated as though an applicant were becoming a QME for the first time, and thus should require that the applicant meet all of the requirements for becoming a QME.

Section 19.
This section provides for issuance of QME certificates. The first paragraph of this section was rewritten for clarity without substantive change. The second paragraph added a prohibition against a non-QME physician to display a QME certificate. There was a problem in that suspended or terminated QME's were forbidden from displaying a QME certificate, but that those who had never even been a QME were not. The QME certificate is a valuable paper, in that it shows recognition of expertise and experience in evaluating workers compensation claims. It can be used and is used to attract patients. Use by non QME physicians is essentially fraudulent. It is necessary to prevent its unauthorized use by all unauthorized physicians.

Section 20.
This section establishes time periods for the IMC to process applications. A new paragraph added that if there were an issue of whether the applicant met all the qualifications, the application would be deemed incomplete pending investigation. There is a problem in that applicants with disqualifying defects submit applications, and their defect in qualification only becomes apparent at a later time. It is necessary that the IMC not be bound by a rule that requires it to rule on an application if it may still be in the process of investigating qualifications. New paragraph (e) will solve that problem.

Section 21.
This new section provides for examinations and applications. The IMC is to give notice of the examination at least 60 calendar days in advance. Applicants must have submitted completed forms at least 30 days before the examination. The IMC is to inform the applicant whether the

applicant will be allowed to take the examination within 15 days of receiving a completed application and fee.

The IMC currently has no regulation which covers this subject, and the rules of this regulation are the current practice of the IMC. To have consistency of practice in dealing with different applicants, the IMC needs rules in this area, and needs them not to be underground regulations. The IMC has found that the timelines selected for this regulation are reasonable, and will allow applicants and the IMC adequate time to take the required actions.

Section 30.
This section provides a system for unrepresented employees to request a panel of QME's, which the employee may do under Labor Code Sections 4061 or 4062. The amendment makes clear that the claims examiner or employer is obliged to complete sections one, two, and three of the form (prescribed in Section 106), and that only the employee may complete section four of the form, send it to the IMC, or select a QME specialty.

Under the Labor Code, the employee, and not the claims personnel, is to select the QME specialty. On the other hand, the claims personnel are in the best position to fill in the basic information about claim. The claims personnel are also charged by Labor Code section 4061 to furnish the form to the employee. There has been a problem in that some times employees send in QME panel selection forms which are not completely filled out. There is a different problem in that sometimes claims personnel improperly attempt to influence the selection of a QME specialty. This provision addresses the problem by making it perfectly clear what part of the request form is to be filled out by the claims personnel and which part is to be filled out only by the employee.

The amendment also requires the employee to furnish his social security number on the form. There is a problem, in that the IMC has no identifying information in its computers on the employee other than the name, and many employees have the same name. If the IMC were to be able to have an identifying number, which need not be disclosed to anyone, it would be able to track problem panel requests by an identifying number that is also used by the Workers Compensation Appeals Board. It would also be able to collect records, when necessary, of all panel requests made by a particular employee. This is something that it is now impossible for the IMC.

Currently, when the IMC receives an incomplete form, it is required to return it with an explanation of why a QME panel selection cannot be made. The amendment would add the requirement that the IMC also notify the other party in the proceeding. There is a problem in that the IMC returns an explanation of why a panel could not be selected to the party that furnished the form, but the other party is left with no explanation. If both parties knew why a form had to be returned the claim process would be expedited. It is necessary that the IMC send an explanation to both parties to prevent these added delays.

The amendment would also add the provision that for employees who never resided in California, the geographic area of QME panel selection shall be by agreement between the employee and employer, or if no agreement, it shall be determined by the place of business of the employer

where the employee had been employed. There is a problem in that there is no provision for determining where a QME should be located for en employee who never resided in California. So that there can be a consistent rule for this situation, it is necessary that the IMC adopt some rule for determining location . The IMC finds that the most reasonable location, if there is no agreement among the parties, is to select the location where the employee worked within California.

Section 31.
This section provides for the process of selecting a QME from a panel of QME's. The section now provides for selection at random from the *appropriate* specialty. The word ***appropriate*** is deleted. There is a problem in that it is impossible for the IMC to select an "appropriate" specialty, because the IMC has no medical history or records of the employee. It therefore cannot determine which specialties might be "appropriate." It is necessary to remove the limitation of *appropriate* from the selection of specialties.

The amendment would add that the form listing QME's would now contain information on the QME's education, training, years of practice, and probationary status, and that probationary status would be noted in a footnote, with a direction to the employee to contact the IMC for further information regarding the probation, if any. There is a problem in that most employees have little knowledge about any particular QME's background. Unless the employee's physician is very familiar with the QME, the employee has little information on which to base a rational decision as to which of three QME's he should see. The IMC finds that it will be helpful to the employee is selecting a physician to know some of this background information; also that it is helpful for the employee to know whether the QME is on probation. The form is most often the only communication between the IMC and the employee. It is necessary that the panel form contain this information for the employee to be able to make an informed selection of a QME.

Paragraph (d) is amended by substituting the phrase ***as defined in*** for the phrase ***and who has provided treatment in accordance with***. This change is to delete unnecessary language. As so described, the physician by definition has *provided treatment*.

The sentence calling for disqualification of a QME is rephrased for clarity.

Section 31.5.
This section provides reasons and methods for replacement of a QME panel member. The provision which would allow replacement of a QME on the request of the employee if he were a member of the same group practice as another member on the panel, is changed to allow replacement at the request of either party. The IMC has found that there is a no reason to discriminate in favor of the employee in this remedy, as having two QME's from the same office is equally likely to disadvantage the employer as the employee.

QME's are to provide reports within certain timeframes. The amendment would add a provision which would allow disqualification, at the request of the employee, if the physician failed to complete a report within the established timeframes. There is a problem in that some QME's do not report in a timely fashion. The employee is disadvantaged by having his QME evaluation

delayed. The ultimate determination of his workers compensation case is delayed. It is necessary to allow the employee the option of selecting a new QME if the report is delayed.

The section provides that any party may request replacement of a panel QME if the employee's treating physician is on the panel. The amendment would also allow replacement if the employee's secondary physician or a physician designated by the primary physician to write a report, were on the panel. Upon review the IMC finds that there is just as much possible prejudice to a party if **any** of the treating physicians are the reporting QME. There is no distinction in this regard between a primary physician and another treater. It is necessary to allow replacement by any party if one of the treaters is on the panel.

The paragraph allowing discretionary replacement of a panel for good cause is rephrased for clarity. The paragraph allowing the IMC Medical Director to replace a panel physician because the specialty chosen is inappropriate, is deleted. The IMC finds that, not having the patient's medical information, it cannot make a rational decision as to whether an employee has selected a suitable specialty for a QME panel. It is necessary that it not have the role of ruling on whether a specialty selection is appropriate or not.

Section 33.5.
This new section provides for inactive status of QME's. QME's may retain their certificates for a minimal fee, if they no longer perform QME evaluations, if they go on inactive status. QME's can return to active status by notifying the Executive Medical Director. Before returning to active status, the physician must either have completed required hours of continuing education or have retaken the QME examination. It would be cause for discipline for a QME on inactive status to perform a medical examination requiring a QME certificate. Physicians called to active duty in the armed forces, would be able to resume the remainder of their QME term which was interrupted by military service.

The IMC has frequent requests by QME's to go on inactive status for a time. Also, some QME's have been called to active duty in the Iraq conflict. A system is necessary which both allows inactive status, and protects the public, by ensuring that QME's who return to active status are qualified. This regulation accomplishes this by requiring notification, and allowing the Medical Director to verify that sufficient continuing education has been taken during the period of inactive status. The IMC finds that it is appropriate to allow QME's called to military service to return to QME status, in the same manner as others called to active duty may have a federal right to return to former jobs.

Section 34.
This section currently provides that a QME examination may be conducted only at the QME office listed on the panel form. The amendment would permit the examination to be conducted at other locations upon the agreement of the employee and the claims administrator. There is a problem in that occasionally it is better for all parties that QME's be able to perform examinations at places other than their registered office. This problem often occurs when the employee is out of state, incarcerated, or in a sparsely populated area. It is necessary that in such situations that the convenience of the parties be accommodated. By allowing examinations at other locations

when the parties agree, this accommodation will not result in one party taking advantage of the other.

Section 35.
This section, which provides for exchange of information between the parties and the QME where the employee is not represented, is partially rewritten for clarity, and thus its paragraphs are re-lettered and renumbered. In addition to medical records, the amendment would allow the parties to provide a job analysis agreed to by the parties, and the record of any previous awards or settlements in any workers compensation proceeding. There is a problem in that important information, notably mutually agreed job analyses and previous workers compensation awards, are not currently covered as a clearly permissible item to be given to a QME for consideration. This section alleviates that problem by putting the burden on the employer to furnish that information if he has it, as the employer is the most likely to possess good records of these items, and allowing the employee to furnish them.

Another added sentence would make clear that the IMC may institute discipline against a QME for violating this section. It is necessary to include such a provision, as ex parte contact with the parties is prohibited, and since other reasons for discipline are stated, this reason should also be clearly stated.

An additional paragraph would define employer contact with the QME which is only about the provision of treating physician's records, not to be ex parte contact.

Section 35.5.
This section which requires certain examinations to be performed according to IMC evaluation procedures is re-written for clarity. Use of the clause, ***to determine the existence and extent of permanent impairment and limitations resulting from an injury***, is substituted for a reference to Labor Code sections 4060, 4061, and 4062.

Section 38.
This section provides for time frames in which QME examinations must be completed, and the granting of extensions of those times. The section is partially re-written for clarity. What used to be in paragraph (a) is now in paragraph (d). A new section (a) is added to make clear that it applies to initial comprehensive evaluations and supplemental evaluations. QME's now have 60 days from the date of request, to complete a supplemental report, unless the parties have agreed to an extension. No consequence is now stated for not completing the supplemental report within 60 days. This is an administrative problem for the IMC, when complaints come in that supplemental reports have not been timely furnished. Delay in reporting severely hinders an employee's access to proper benefits. A provision is added that would entitle the employee to request a new panel of QME's if a QME fails to complete a requested supplemental report within 60 days. The IMC finds that this is a necessary and appropriate remedy for the delayed report.

Section 39.
This section provides for when records may be destroyed. This section has minor wording changes made in it for clarity. There is no substantive change to the meaning of the section.

Section 39.5.

This section provides for the retention of medical-legal reports for five years. It is reworded for clarity without substantive change. Additionally, a new sentence is added to allow for electronic form retention of reports if the documents contain a digital signature as defined in the Government Code. This change is necessary to accommodate the movement toward electronic storage of content. The IMC finds that the digital signature requirement is an adequate test of when such storage is deemed safe and appropriate.

Section 41.
This section establishes some ethical requirements for QME's. QME's are now barred from ex parte communication in violation of Labor Code Section 4062.2. The amendment would also bar ex parte communication which is in violation of Section 35 of these regulations.

The IMC is charged with regulating the ethics of QME's. The IMC finds that it is necessary to have some ethical rules published which are quite clear so that the entire workers compensation community can know what conduct is proscribed. It also finds that clearly prescribed rules are necessary to facilitate the imposition of sanctions on QME's whose ethical conduct falls below the expected norm. Ex parte communication is a problem. Barring ex parte communication which is violation of Section 35 will make easier the imposition of sanctions for such violations.

The amendment would also prescribe that all discussions in the QME's medical report of medical issues, research, and conclusions shall be composed by the QME. It would also specifically bar previously used language created by a third party and language not written by the QME. Both of these rules are important to be clearly stated both so that QME's know exactly what may not be done, and so that the imposition of sanctions for violations is easier for the IMC. A QME must entirely write a QME report. The rule prohibiting use of language drafted by others makes clear that not even small parts of the report may be written by others. The use of standardized, purchased report language is perceived to be a problem in the workers compensation community.

It would also provide that a QME may not treat or solicit to provide medical treatment to an employee except as permitted in Section 11(d) (which permits emergency treatment or treatment after the employee has requested it be provided by the QME). The amendment would also provide that no QME shall engage in inappropriate physical contact or make inappropriate or offensive comments not related to the examination. These two areas are perceived to be problem areas in the workers compensation community. The IMC finds that by specifically delineating them as proscribed conduct, the incidence of such conduct is likely to decrease.

Section 49.
This section provides additional definitions for Article 4.5 of the Regulations, relating to minimum time guidelines. The definition of QME has been moved to Section 1, the principal definitional section. For clarity, the words ***by the evaluator*** are added to a description of time spent on research, record review, and report writing. This makes no substantive change.

Section 49.2.
This section prescribes minimum time guidelines for a neuromusculoskeletal evaluation. The phrase, ***including an injury to the foot and ankle*** is added, to make it clear that these injuries fall within this guideline.

Section 49.4.
This section prescribes minimum time guidelines for a cardiovascular evaluation. There is a rephrasing which has no substantive effect.

Section 49.6.
This section prescribes minimum time guidelines for a pulmonary evaluation. There is a rephrasing which has no substantive effect.

Section 49.8**.**
This section prescribes minimum time guidelines for a psychiatric evaluation. There is a rephrasing which has no substantive effect.

Section 49.9.
This section prescribes minimum time guidelines for evaluations not otherwise specified. There is a rephrasing which has no substantive effect.

Section 50.
This section prescribes the process for applying for reappointment as a QME and for the application form. There are several minor word insertions for clarity. The amendment adds to the application form requirements that the applicant state whether the applicant has been convicted of any criminal charge, and if so what; that the applicant state whether the applicant is currently the subject of an accusation by the applicant's licensing board; that the applicant state how many QME reports the QME has prepared; that the applicant sign the application under penalty of perjury. There is a problem in that QME's who have had certain criminal convictions or licensing board problems should not be reappointed as QME's, but that the IMC has no effective and certain means of learning about these incidents. The IMC finds that requiring the applicant for reappointment to disclose such matters under penalty of perjury on the form is most likely to lead to the IMC obtaining the knowledge necessary to investigate the records of the QME's with the problem records.

Section 52.
This section provides that QME's may be denied reappointment if they have failed to notify the IMC of periods of unavailability to perform QME evaluations. The amendment would change the period covered by the obligation to report unavailability, from a calendar year to the fee period of the QME, as defined. There is a problem in that QME appointments expire throughout the year, and not on a calendar basis. The only way to make the unavailability regulation effective, is to have the period covered by the reporting coincide with the annual periods for which fees are paid.

Section 58.
This new section would provide that the IMC may deny reappointment to a QME who would no longer meet the requirements for initial appointment. There is a problem in that there are a number of issues which would preclude the appointment of one as a QME. All of these issues have been deemed important enough to preclude appointment. However, unless specified, the same serious issues are not grounds for denying reappointment. This regulation is necessary and solves that problem by providing that the IMC can deny reappointment for the same grounds that

it could deny initial appointment, excepting qualifications requirements that have changed since the appointment of the QME.

Section 60.
This section defines the grounds for discipline of QME's. There are several word changes for clarity which have no substantive effect. The amendment would also provide that the IMC may institute or continue a disciplinary proceeding against a QME even if the QME resigns, the appointment expires, or the QME certification is forfeited by operation of law. There is a problem in that if a QME resigns or his appointment expires during an investigation, the IMC currently has no clear authority to continue an accusation against the QME, and that it is difficult to prevent a QME from later reapplying and becoming certified as a QME, who was under investigation or accusation at the time of the end of his appointment. The IMC has had in some case to go so far as to reappoint a QME and then immediately begin an accusation seeking to discipline the QME. This does not allow the IMC to protect the public from QME's who should not be in the system. It is necessary that the IMC be able to continue with accusations against QME's even if they resign, so that there may be appropriate findings against them which would prevent their reappointment should they later reapply.

The section lists some offenses which may occasion imposition of discipline, one of which is ex parte contact prohibited by Labor Code Section 4062.2. The amendment would also provide that ex parte contact prohibited by Section 35 of these regulations is also such an offense. This is necessary to allow easy imposition of sanctions against conduct prohibited by Section 35.

Section 61.
This section delineates the hearing procedure to be followed for QME discipline. There are several changes in phrasing without substantive effect. The section provides that an administrative law judge or hearing officer shall file a written statement of findings and decisions after a decision has been made regarding the existence of a prima facie case, and after a hearing. The amendment would delete the reference to a decision about the existence of a prima facie case as duplicative of an earlier requirement that a committee find the existence of a prima facie case. This change is necessary to eliminate duplicative regulation.

Section 62.
This section provides for a procedure for probation of disciplined QME's. There are several rephrasings which have no substantive effect.

Section 63.
This new section provides for the process of using and serving a notice of denial and statement of issues in connection with the denial of appointment, reappointment, and certification as an education provider. The section would provide that the council would notify applicants whose applications were to be denied. The IMC could either serve a statement of issues of matters to be contested per Title2, Division 3, Part 1, Chapter 5 (beginning with section 11500) of the Government Code to begin a contested proceeding, or notify the applicant that the application is denied and of the applicant's right to a hearing. It would further provide that unless the applicant made a written request for hearing within 60 days, the applicant's right to a hearing would be deemed waived. There is a problem in that there is no established procedure for dealing with

education providers' applications and removals. There is the always the potential for providers to raise due process issues in any proceedings against them. This new regulation solves that problem by adopting Government Code administrative hearing procedures as the method by which to proceed. By providing for a waiver of a hearing if not asked for within 60 days, a clear method of ending disputes is adopted, in cases in which the provider does not wish to proceed further and accepts the notice of the IMC as dispositive.

Section 156.
This section provides for the IMC to request to view and to review QME advertising copy. There are several word changes for clarity which have no substantive effect.

Section 157.
This section provides for determinations of the IMC and appeals regarding QME advertising copy which the IMC has requested to review. The section now provides for the Medical Director to make a preliminary determination that it violates Business and Professions Code Section 651. The IMC is to hold a hearing on the Medical Director's preliminary determination. If the IMC sustains the Director's determination and the physician is not a QME, the IMC is to refer the matter to the licensing board. If the IMC sustains the Director's determination and the physician is a QME, the IMC is to hold a hearing or delegate a hearing to an administrative law judge. If the complaint is sustained, the QME has 30 days to file a notice of appeal, in which case, three members of the IMC shall serve as an appellate panel. The appellate panel is to hear the appeal and recommend a decision to the IMC. The IMC is to take appropriate action on the recommended decision. A complete copy of the record is to be furnished each IMC member before the IMC takes final action. The director is to forward the final decision of the IMC to the licensing board.

The amendment would rewrite the section. If the Director made a preliminary determination of violation, the matter would be referred to the Discipline Committee. If the Committee sustained the Director's determination, the QME would be notified of a right to a hearing. A hearing would be held by either a hearing officer designated by the Director or by an administrative law judge. If a decision sustained the determination, it should be recommended to the IMC, along with recommended sanctions. The council may adopt the decision, or decide to take the case unto itself as a body. The QME may petition for reconsideration of an adverse decision within 30 days. Judicial review may be had by filing a petition within 30 days of an adverse decision.

There is a problem with the present procedure in that it is too cumbersome, and that it improperly gives the role of appellate authority to the same body that heard the proceeding. The IMC finds that involving the Discipline Committee early on, would allow the Discipline Committee, which deals with other discipline matters on a regular basis, and is the most familiar with the level of sanctions imposed for various transgressions, would allow for a smoother process, and fewer hearings, as the Discipline Committee regularly recommends settlements by way of stipulation between the QME and the IMC.

Section 158.
There is one occasion in which the word ***their*** is substituted for the phrase ***his or her***. This change is non-substantive, but required for clarity and easier reading.